

1 The Honorable Benjamin H. Settle
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10 UNITED STATES DISTRICT COURT FOR THE
11 WESTERN DISTRICT OF WASHINGTON
12 AT TACOMA
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15 UNITED STATES OF AMERICA,
16 Plaintiff,
17 v.
18 CODY BENSON,
19 Defendant.
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21 NO. CR21-5222 BHS
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23 UNITED STATES'
24 PROPOSED JURY INSTRUCTIONS
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27 **UNITED STATES' PROPOSED JURY INSTRUCTIONS**
(Cited)

28 DATED: December 22, 2023
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31 Respectfully submitted,
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12 **INSTRUCTIONS IN THE COURSE OF TRIAL**
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1 PLAINTIFF'S REQUESTED INSTRUCTION NO. 1
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The parties have agreed to certain facts that have been stated to you. Those facts
are now conclusively established.

Ninth Circuit Model Jury Instruction - 2.3 (2022 Edition - *Revised 9/2019*)

1 PLAINTIFF'S REQUESTED INSTRUCTION NO. 2

2 INSTRUCTION NO. ____

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4 You are about to hear evidence that [describe evidence to be received for
5 limited purpose]. I instruct you that this evidence is admitted only for the limited
6 purpose of [describe purpose] and, therefore, you must consider it only for that
7 limited purpose and not for any other purpose.

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Ninth Circuit Model Jury Instruction - 2.12 (2022 Edition - *Revised 3/2018*)

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INSTRUCTIONS AT CLOSE OF CASE

1 PLAINTIFF'S REQUESTED INSTRUCTION NO. 3
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34 INSTRUCTION NO. ____
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7 Members of the jury, now that you have heard all the evidence, it is my duty to
8 instruct you on the law that applies to this case. A copy of these instructions will be
9 available in the jury room for you to consult.

10 It is your duty to weigh and to evaluate all the evidence received in the case and,
11 in that process, to decide the facts. It is also your duty to apply the law as I give it to you
12 to the facts as you find them, whether you agree with the law or not. You must decide the
13 case solely on the evidence and the law. You will recall that you took an oath promising
14 to do so at the beginning of the case. You should also not be influenced by any person's
15 race, color, religious beliefs, national ancestry, sexual orientation, gender identity,
16 gender, or economic circumstances. Also, do not allow yourself to be influenced by
17 personal likes or dislikes, sympathy, prejudice, fear, public opinion, or biases, including
18 unconscious biases. Unconscious biases are stereotypes, attitudes, or preferences that
19 people may consciously reject but may be expressed without conscious awareness,
20 control, or intention.

21 You must follow all these instructions and not single out some and ignore others;
22 they are all important. Please do not read into these instructions or into anything I may
23 have said or done as any suggestion as to what verdict you should return—that is a matter
24 entirely up to you.

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26 Ninth Circuit Model Jury Instruction - 6.1 (2022 Edition - *Revised 5/2020*)
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1 PLAINTIFF'S REQUESTED INSTRUCTION NO. 4
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4 INSTRUCTION NO. ____
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7 The indictment is not evidence. The defendant has pleaded not guilty to the
8 charges. The defendant is presumed to be innocent unless and until the government
9 proves the defendant guilty beyond a reasonable doubt. In addition, the defendant does
10 not have to testify or present any evidence. The defendant does not have to prove
11 innocence; the government has the burden of proving every element of the charges
12 beyond a reasonable doubt.
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Ninth Circuit Model Jury Instruction - 6.2 (2022 Edition - *Revised 12/2017*)

1 PLAINTIFF'S REQUESTED INSTRUCTION NO. 5
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4 INSTRUCTION NO. ____
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7 [EITHER:]
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10 A defendant in a criminal case has a constitutional right not to testify. In arriving
11 at your verdict, the law prohibits you from considering in any manner that a defendant
12 did not testify.
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15 [OR:]
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18 The defendant has testified. You should treat this testimony just as you would the
19 testimony of any other witness.
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22 Ninth Circuit Model Jury Instruction - 6.4 (2022 Edition)
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1 PLAINTIFF'S REQUESTED INSTRUCTION NO. 6
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4 INSTRUCTION NO. ____
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7 Proof beyond a reasonable doubt is proof that leaves you firmly convinced the
8 defendant is guilty. It is not required that the government prove guilt beyond all possible
9 doubt.

10 A reasonable doubt is a doubt based upon reason and common sense and is not
11 based purely on speculation. It may arise from a careful and impartial consideration of all
12 the evidence, or from lack of evidence.

13 If after a careful and impartial consideration of all the evidence, you are not
14 convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find
15 the defendant not guilty. On the other hand, if after a careful and impartial consideration
16 of all the evidence, you are convinced beyond a reasonable doubt that the defendant is
17 guilty, it is your duty to find the defendant guilty.

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26 Ninth Circuit Model Jury Instruction - 6.5 (2022 Edition - *Revised 9/2021*)
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1 PLAINTIFF'S REQUESTED INSTRUCTION NO. 7
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5 INSTRUCTION NO. ____
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8 The evidence you are to consider in deciding what the facts are consists of:
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11 *First*, the sworn testimony of any witness;
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14 *Second*, the exhibits received in evidence; and
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17 *Third*, any facts to which the parties have agreed.
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Ninth Circuit Model Jury Instruction - 6.6 (2022 Edition - *Revised 12/2017*)

1 PLAINTIFF'S REQUESTED INSTRUCTION NO. 8
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34 INSTRUCTION NO. ____
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In reaching your verdict you may consider only the testimony and exhibits received in evidence. The following things are not evidence, and you may not consider them in deciding what the facts are:

- 7 1. Questions, statements, objections, and arguments by the lawyers are not
8 evidence. The lawyers are not witnesses. Although you must consider a
9 lawyer's questions to understand the answers of a witness, the lawyer's
10 questions are not evidence. Similarly, what the lawyers have said in their
11 opening statements, will say in their closing arguments, and have said at
12 other times is intended to help you interpret the evidence, but it is not
13 evidence. If the facts as you remember them differ from the way the
14 lawyers state them, your memory of them controls.
- 15 2. Any testimony that I have excluded, stricken, or instructed you to disregard
16 is not evidence. [In addition, some evidence was received only for a limited
17 purpose; when I have instructed you to consider certain evidence in a
18 limited way, you must do so.]
- 19 3. Anything you may have seen or heard when the court was not in session is
20 not evidence. You are to decide the case solely on the evidence received at
21 the trial.

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26 Ninth Circuit Model Jury Instruction - 6.7 (2022 Edition - *Revised 3/2018*)
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1 PLAINTIFF'S REQUESTED INSTRUCTION NO. 9
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34 INSTRUCTION NO. ____
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Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which you can find another fact.

You are to consider both direct and circumstantial evidence. Either can be used to prove any fact. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

Ninth Circuit Model Jury Instruction - 6.8 (2022 Edition - *Revised 12/2017*)

1 PLAINTIFF'S REQUESTED INSTRUCTION NO. 10
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34 INSTRUCTION NO. ____
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7 In deciding the facts in this case, you may have to decide which testimony to
8 believe and which testimony not to believe. You may believe everything a witness says,
9 or part of it, or none of it.

10 In considering the testimony of any witness, you may take into account the
11 following:

12 *First*, the opportunity and ability of the witness to see or hear or know the things
13 testified to;

14 *Second*, the witness's memory;

15 *Third*, the witness's manner while testifying;

16 *Fourth*, the witness's interest in the outcome of the case, if any;

17 *Fifth*, the witness's bias or prejudice, if any;

18 *Sixth*, whether other evidence contradicted the witness's testimony;

19 *Seventh*, the reasonableness of the witness's testimony in light of all the evidence;
20 and

21 *Eighth*, any other factors that bear on believability.

22 Sometimes a witness may say something that is not consistent with something else
23 he or she said. Sometimes different witnesses will give different versions of what
24 happened. People often forget things or make mistakes in what they remember. Also, two
25 people may see the same event but remember it differently. You may consider these
26 differences, but do not decide that testimony is untrue just because it differs from other
27 testimony.

28 However, if you decide that a witness has deliberately testified untruthfully about
29 something important, you may choose not to believe anything that witness said. On the
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1 other hand, if you think the witness testified untruthfully about some things but told the
2 truth about others, you may accept the part you think is true and ignore the rest.

3 The weight of the evidence as to a fact does not necessarily depend on the number
4 of witnesses who testify. What is important is how believable the witnesses were, and
5 how much weight you think their testimony deserves.

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Ninth Circuit Model Jury Instruction - 6.9 (2022 Edition - *Revised 12/2017*)

1 PLAINTIFF'S REQUESTED INSTRUCTION NO. 11
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4 INSTRUCTION NO. ____
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7 You are here only to determine whether the defendant is guilty or not guilty of the
8 charges in the indictment. The defendant is not on trial for any conduct or offense not
9 charged in the indictment.
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Ninth Circuit Model Jury Instruction - 6.10 (2022 Edition - *Revised 12/2017*)

1 PLAINTIFF'S REQUESTED INSTRUCTION NO. 12
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4 INSTRUCTION NO. ____
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7 A separate crime is charged against the defendant in each count. You must decide
8 each count separately. Your verdict on one count should not control your verdict on any
9 other count.
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Ninth Circuit Model Jury Instruction - 6.11 (2022 Edition - *Revised 12/2017*)

1 PLAINTIFF'S REQUESTED INSTRUCTION NO. 13
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4 INSTRUCTION NO. ____
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7 The indictment charges that the offenses alleged in Counts 1 through 3 were
8 committed "on or about" certain dates.
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11 Although it is necessary for the government to prove beyond a reasonable doubt
12 that the offense was committed on a date reasonably near the dates alleged the
13 indictment, it is not necessary for the government to prove that the offense was
14 committed precisely on the date charged.
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Ninth Circuit Model Jury Instruction - 6.18 (2022 Edition - *Revised 6/2015*)

1 PLAINTIFF'S REQUESTED INSTRUCTION NO. 14
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4 INSTRUCTION NO. ____
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8 You have heard testimony that the defendant made statements. It is for you to
9 decide (1) whether the defendant made the statement, and (2) if so, how much weight
10 to give to it. In making those decisions, you should consider all the evidence about the
11 statement, including the circumstances under which the defendant may have made it.
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Ninth Circuit Model Jury Instruction - 3.1 (2022 Edition – *Revised 8/2023*)

1 PLAINTIFF'S REQUESTED INSTRUCTION NO. 15
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4 INSTRUCTION NO. ____
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7 Certain charts and summaries have been admitted into evidence. Charts and
8 summaries are only as good as the underlying supporting material. You should, therefore,
9 give them only such weight as you think the underlying material deserves.
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12 [This instruction may be unnecessary if there is no dispute as to the accuracy of
13 the chart or summary.]
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Ninth Circuit Model Jury Instruction - 3.17 (2022 Edition - *Revised 3/2018*)

1 PLAINTIFF'S REQUESTED INSTRUCTION NO. 16
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34 INSTRUCTION NO. ____
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67 The defendant is charged in Counts 1 to 3 of the indictment with wire fraud in
8 violation of Section 1343 of Title 18 of the United States Code. For the defendant to be
9 found guilty of that charge, the government must prove each of the following elements
10 beyond a reasonable doubt:11 *First*, the defendant knowingly participated in, devised, or intended to devise a
12 scheme or plan to defraud for the purpose of obtaining money or property by means of
13 false or fraudulent pretenses, representations, or promises. Deceitful statements of half-
14 truths may constitute false or fraudulent representations;15 *Second*, the statements made as part of the scheme were material; that is, they had
16 a natural tendency to influence, or were capable of influencing, a person to part with
17 money or property;18 *Third*, the defendant acted with the intent to defraud, that is, the intent to deceive
19 and cheat; and20 *Fourth*, the defendant used, or caused to be used, an interstate or foreign wire
21 communication to carry out or attempt to carry out an essential part of the scheme.22 In determining whether a scheme to defraud exists, you may consider not only the
23 defendant's words and statements, but also the circumstances in which they are used as a
24 whole.25 A *wiring* is caused when one knows that a wire will be used in the ordinary course
26 of business or when one can reasonably foresee such use.27 It need not have been reasonably foreseeable to the defendant that the wire
28 communication would be interstate or foreign in nature. Rather, it must have been
29 reasonably foreseeable to the defendant that some wire communication would occur in
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1 furtherance of the scheme, and an interstate or foreign wire communication must have
2 actually occurred in furtherance of the scheme.
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Ninth Circuit Model Jury Instruction - 15.35 (2022 Edition - *Revised 8/2023*)

1 PLAINTIFF'S REQUESTED INSTRUCTION NO. 17
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4 INSTRUCTION NO. ____
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7 An act is done knowingly if the defendant is aware of the act and does not act or
8 fail to act through ignorance, mistake, or accident. The government is not required to
9 prove that the defendant knew that her acts or omissions were unlawful. You may
10 consider evidence of the defendant's words, acts, or omissions, along with all the other
11 evidence, in deciding whether the defendant acted knowingly.
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Ninth Circuit Model Jury Instruction - 4.8 (2022 Edition - *Revised 9/2022*)

1 PLAINTIFF'S REQUESTED INSTRUCTION NO.18
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34 INSTRUCTION NO. ____
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67 When you begin your deliberations, elect one member of the jury as your
8 foreperson who will preside over the deliberations and speak for you here in court.
910 You will then discuss the case with your fellow jurors to reach agreement if you
11 can do so. Your verdict, whether guilty or not guilty, must be unanimous.
1213 Each of you must decide the case for yourself, but you should do so only after you
14 have considered all the evidence, discussed it fully with the other jurors, and listened to
15 the views of your fellow jurors.
1617 Do not be afraid to change your opinion if the discussion persuades you that you
18 should. But do not come to a decision simply because other jurors think it is right.
1920 It is important that you attempt to reach a unanimous verdict but, of course, only if
21 each of you can do so after having made your own conscientious decision. Do not change
22 an honest belief about the weight and effect of the evidence simply to reach a verdict.
2324 Perform these duties fairly and impartially. Do not allow personal likes or dislikes,
25 sympathy, prejudice, fear, or public opinion to influence you. You should also not be
26 influenced by any person's race, color, religious beliefs, national ancestry, sexual
27 orientation, gender identity, gender, or economic circumstances. Also, do not allow
yourself to be influenced by personal likes or dislikes, sympathy, prejudice, fear, public
opinion, or biases, including unconscious biases. Unconscious biases are stereotypes,
attitudes, or preferences that people may consciously reject but may be expressed without
conscious awareness, control, or intention.
2829 It is your duty as jurors to consult with one another and to deliberate with one
30 another with a view towards reaching an agreement if you can do so. During your
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1 deliberations, you should not hesitate to reexamine your own views and change your
2 opinion if you become persuaded that it is wrong.

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Ninth Circuit Model Jury Instruction - 6.19 (2022 Edition - *Revised 5/2020*)

1 PLAINTIFF'S REQUESTED INSTRUCTION NO. 19
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34 INSTRUCTION NO. ____
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67 Because you must base your verdict only on the evidence received in the case and
8 on these instructions, I remind you that you must not be exposed to any other information
9 about the case or to the issues it involves. Except for discussing the case with your fellow
10 jurors during your deliberations:11 Do not communicate with anyone in any way and do not let anyone else
12 communicate with you in any way about the merits of the case or anything to do
13 with it. This restriction includes discussing the case in person, in writing, by
14 phone, tablet, computer, or any other means, via email, text messaging, or any
15 Internet chat room, blog, website or any other forms of social media. This
16 restriction applies to communicating with your family members, your employer,
17 the media or press, and the people involved in the trial. If you are asked or
18 approached in any way about your jury service or anything about this case, you
19 must respond that you have been ordered not to discuss the matter and to report
20 the contact to the court.21 Do not read, watch, or listen to any news or media accounts or commentary
22 about the case or anything to do with it; do not do any research, such as consulting
23 dictionaries, searching the Internet or using other reference materials; and do not
24 make any investigation or in any other way try to learn about the case on your
25 own.26 The law requires these restrictions to ensure the parties have a fair trial based on
27 the same evidence that each party has had an opportunity to address. A juror who violates
these restrictions jeopardizes the fairness of these proceedings, and a mistrial could result

1 that would require the entire trial process to start over. If any juror is exposed to any
2 outside information, please notify the court immediately.
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Ninth Circuit Model Jury Instruction - 6.20 (2022 Edition - *Revised 12/2020*)

1 PLAINTIFF'S REQUESTED INSTRUCTION NO. 20
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4 INSTRUCTION NO. ____
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7 Some of you have taken notes during the trial. Whether or not you took notes, you
8 should rely on your own memory of what was said. Notes are only to assist your memory.
9 You should not be overly influenced by your notes or those of your fellow jurors.
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Ninth Circuit Model Jury Instruction - 6.21 (2022 Edition)

1 PLAINTIFF'S REQUESTED INSTRUCTION NO. 21
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The punishment provided by law for this crime is for the court to decide. You may not consider punishment in deciding whether the government has proved its case against the defendant beyond a reasonable doubt.

Ninth Circuit Model Jury Instruction - 6.22 (2022 Edition - *Revised 9/2019*)

1 PLAINTIFF'S REQUESTED INSTRUCTION NO. 22
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34 INSTRUCTION NO. ____
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7 If it becomes necessary during your deliberations to communicate with me, you
8 may send a note through the clerk, signed by any one or more of you. No member of the
9 jury should ever attempt to communicate with me except by a signed writing, and I will
10 respond to the jury concerning the case only in writing or here in open court. If you send
11 out a question, I will consult with the lawyers before answering it, which may take some
12 time. You may continue your deliberations while waiting for the answer to any question.
13 Remember that you are not to tell anyone—including me—how the jury stands,
14 numerically or otherwise, on any question submitted to you, including the question of the
15 guilt of the defendant, until after you have reached a unanimous verdict or have been
16 discharged.
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Ninth Circuit Model Jury Instruction - 6.24 (2022 Edition)

1 PLAINTIFF'S REQUESTED INSTRUCTION NO. 23
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4 INSTRUCTION NO. ____
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7 A verdict form has been prepared for you. After you have reached unanimous
8 agreement on a verdict, your presiding juror should complete the verdict form according
9 to your deliberations, sign and date it, and advise the clerk that you are ready to return to
10 the courtroom.
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Ninth Circuit Model Jury Instruction - 6.23 (2022 Edition)